

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

United States Courts
Southern District of Texas
ENTERED

AUG 30 2006

Michael N. Milby, Clerk of Court

E-PASS TECHNOLOGIES, INC.,

Plaintiff,

vs.

MICROSOFT CORPORATION and
COMPAQ COMPUTER CORPORATION,

Defendants.

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CIVIL ACTION H-02-0439

UNOPPOSED MOTION AND ORDER

The parties to this action, by their respective counsel, request that this Court enter the within proposed Order based upon the following recitations:

WHEREAS, on August 4, 2006, this Court granted Defendant Microsoft Corporation's ("Microsoft") and Defendant Compaq Computer Corporation's ("Compaq") (collectively, "Defendants") motions for summary judgment of non-infringement of claim 19 of E-Pass Technologies, Inc.'s ("E-Pass") U.S. Patent No. 5,276,311, and entered Judgment accordingly;

WHEREAS, Defendants have pending counterclaims for invalidity of the '311 patent and additional claims and prayers for relief which, to date, have not been resolved, preventing this Court's August 4, 2006 Judgment from being a "final decision" within the meaning of 28 U.S.C. § 1295(a)(1);

WHEREAS, on August 18, 2006, Microsoft filed a Bill of Costs;

WHEREAS, on August 28, 2006, E-Pass filed a Notice of Appeal of this Court's August 4, 2006 Judgment; and


WHEREAS, on August 28, 2006 counsel for E-Pass and counsel for Defendants conferred regarding the foregoing and agreed to the entry of the following order:

1. Defendants' counterclaims for invalidity of the '311 patent and additional claims and prayers for relief are dismissed without prejudice, subject to reinstatement should the Court of Appeals for the Federal Circuit reverse, vacate and/or remand the case to this Court for further proceedings; and

2. All proceedings related to the determination and entry of costs are stayed pending resolution of E-Pass' appeal of this Court's August 4, 2006 Judgment.

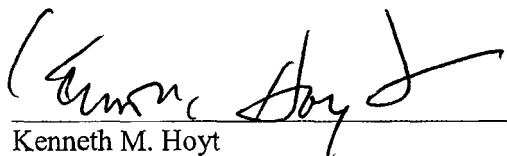
Respectfully submitted,

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SO ORDERED.

Dated: August 30, 2006


Kenneth M. Hoyt
United States District Judge